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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/235,898 01/22/99 PECKOVER

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EXAMINER

LM02/0327

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MYHRE, J

ART UNIT

PAPER NUMBER

2767

DATE MAILED:

03/27/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/235,898**

Applicant(s)

**Peckover**

Examiner

**James Myhre**

Group Art Unit

**2767**



☒ Responsive to communication(s) filed on Jan 28, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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## **DETAILED ACTION**

### ***Response to Amendment***

1. The preliminary amendment filed on January 28, 1999 canceling claims 2-57 has been received and entered. The only outstanding claim is Claim 1.

### ***Double Patenting***

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claim 1 is provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of copending Application No. 08/784,829. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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- a. Stent et al (5,355,327) discloses a system for automatic collection of statistical data about the operation of a remote data terminal.
- b. Fields et al (5,299,115) discloses a system and method for using historical data to project future product demands.
- c. Dedrick (5,696,965) discloses a system for retrieving electronic data using an appraisal agent to search for information matching the search criteria.
- d. Naftzger (5,717,866) discloses a method for analyzing customer responses to advertisements in relation to other advertisements.
- e. Waits et al (5,721,831) discloses a method and apparatus for recording the results of a marketing activity.
- f. Westrope et al (5,721,832) discloses a method and apparatus for making selections for an on-line catalog in accordance with the customer's preferences.
- g. Dedrick (5,724,521) discloses a method and apparatus for presenting customized advertisements to consumers in a best price manner.
- h. Reilly et al (5,740,549) discloses a system and method for distributing advertisements based on customer preferences.
- i. Bixler et al (5,745,882) discloses a method for conducting a continuous on-line search for advertisements matching the search criteria.
- j. Personal Agents, Inc. (WO 97/26612) is the international filing of the current invention by the inventor.

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k. Connolly, Daniel W. ("Proposals for Gathering Consumer Demographics") discusses a method using HTML coding of gathering information online.


l. PRNewswire ("Streams Readies Release of Breakthrough Internet Media Planning and Assessment") discusses a method for measuring results of Internet promotional efforts.


m. Tassone, Dominic ("The Lilypad White Paper") discusses the software product "Lilypad" which evaluates the effectiveness of website promotions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exr. James W. Myhre whose telephone number is (703) 308-7843. The examiner can normally be reached on weekdays from 6:00 a.m. to 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tod Swann, can be reached on (703) 308-7791. The fax phone number for Formal or Official faxes to Technology Center 2700 is (703) 308-9051 or 9052. Draft or informal faxes for this Art Unit can be submitted to (703) 305-0040.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-3900.

  
JWM  
March 16, 2000

  
TOD R. SWANN  
SUPERVISORY PATENT EXAMINER  
GROUP 2700